

1 J. Giardina - Recross

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2 of who, if anyone, killed Paul Pope, and both
3 disclaim any reference, or any claim that she made
4 mention of the homicide of Tamika Means. That's in
5 contrast to Miss Anderson's testimony and I
6 understand that. That's what we're here for is to
7 resolving of that conflict. Anything further from
8 Officer Giardina?

9 MR. SCHWEGLER: Not for the People, your
10 Honor.

11 THE COURT: Okay. Thank you, sir.

12 THE WITNESS: Thanks.

13 MR. SCHWEGLER: Sergeant Costantino.

14 THE CLERK: Thank you. Please be seated.
15 Please state your name for the record, spelling
16 your last name.

17 A N T H O N Y C O S T A N T I N O, being duly called.
18 and sworn as a witness on behalf of the People, took the
19 stand and testified as follows:

20 THE CLERK: City, town or village in which you
21 reside?

22 THE WITNESS: Buffalo.

23 THE CLERK: Thank you.

24 DIRECT EXAMINATION

25 BY MR. SCHWEGLER:



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A. Costantino - Direct

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2

Q. Sir, you're a Detective-sergeant with the Buffalo Police Department currently assigned to the Homicide Unit, is that correct?

5

A. Yes, I am.

6

Q. How long have you been working the Homicide Squad?

8

A. About six and a half years.

9

Q. And how long have you been a Buffalo police officer in your career?

11

A. Thirty-three years.

12

Q. Sergeant, were you involved in the investigation of the homicide of Tamika Means?

14

A. Yes, I was.

15

Q. When did you first become aware of a claim by a young woman by the name of Wymeka Anderson that she had made statements to members of the Homicide Squad advising them that a person other than Cory Epps was actually the killer?

19

A. I came aware I guess in your office but I don't remember the date.

21

Q. Did you have any contact with Miss Anderson prior to the conviction of Mr. Epps?

23

A. I did not.

24

Q. Subsequent to that conviction, were you provided with a copy of an anonymous, so-called anonymous letter dated

1 A. Costantino - Direct

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2 April 27, 1998?

3 A. Yes sir.

4 Q. Do you recall how you obtained that?

5 A. In your office.

6 Q. Had you heard anything at all prior to that being
7 sent over to your office or delivered to you that would
8 indicate that Russell Montgomery was the killer of Tamika
9 Means and not Cory Epps?

10 A. No.

11 Q. Did you receive any reports from any of your
12 colleagues, be it homicide detectives or other officers that
13 Ms. Anderson or anyone else had come forward and said wait,
14 you have the wrong person, it was really Russell Montgomery
15 that killed Tamika Means and not Cory Epps?

16 A. Did not.

17 Q. Once you became aware of this so-called anonymous
18 letter, did you investigate the contents of that letter?

19 A. Yes.

20 Q. Did you speak with Jackie Bradley, the passenger
21 in the vehicle in which Miss Means was driving the night she
22 was shot?

23 A. Yes, I did.

24 Q. Did Miss Bradley ever renounce her identification
25 of Cory Epps as the killer?

1 A. Costantino - Cross

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2 A. Never.

3 Q. Is it your sworn testimony that the first time
4 you as a police officer became aware of this claim that
5 Russell Montgomery had killed Tamika Means was after the
6 conviction, jury verdict had been rendered against Cory Epps
7 for that killing?

8 A. That's correct. That's my sworn testimony.

9 MR. SCHWEGLER: Nothing further.

10 CROSS EXAMINATION

11 BY MR. COTTER:

12 Q. Detective, when you first became aware of an
13 anonymous letter, and I show you what's Defendant's 5 and ask
14 you if this is the anonymous letter that you are referencing?

15 A. Yes, it looks like a copy of the letter, sir.

16 Q. And you've indicated that it was at 25 Delaware
17 in Mr. Schwegler's own office?

18 A. When I first became aware of it?

19 Q. Yes.

20 A. That's correct.

21 THE COURT: Is the letter itself dated?

22 MR. COTTER: It is, Judge, 4/27/98.

23 THE COURT: 4/27/98?

24 Q. Is that correct?

25 A. 4/27/98, sir.

1 A. Costantino - Cross

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2 Q. And as you sit here today, you don't recall what
3 date it was that you became aware of that letter?

4 A. Well, it was sometime after April 27th.

5 Q. Of 1998?

6 A. Right.

7 Q. Okay. Now when did you -- have you ever learned
8 the identity of the person who wrote that letter?

9 A. Well, I guess Wymeka Anderson wrote this letter.

10 Q. That's your understanding?

11 A. Yes.

12 Q. When did you get this understanding?

13 A. The same time I guess we were talking in Mr.
14 Schwegler's office.

15 Q. Okay. Now subsequent to that, you went to see
16 Miss Anderson, correct?

17 A. That's correct.

18 Q. And that you did on June 4th of 1998?

19 A. I believe that's the date, yes.

20 Q. Now showing you Defendant's 7 for identification,
21 can you identify the handwriting?

22 A. It's not my handwriting. It possibly could be
23 Detective Masecchia's.

24 Q. Okay. He's your partner?

25 A. Yes.

1 A. Costantino - Cross

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2 Q. Okay.

3 THE COURT: What is it, a P-73 or something?

4 THE WITNESS: No sir, it's a P-88. It's --

5 THE COURT: P-88?

6 THE WITNESS: P-88. It's a photo array
7 identification affidavit.

8 THE COURT: Okay. And this is you think by
9 your colleague?

10 THE WITNESS: Detective Masecchia's
11 handwriting.

12 THE COURT: Masecchia's?

13 THE WITNESS: I think it is, sir..

14 THE COURT: And what is the date of this?

15 THE WITNESS: 6/4/98.

16 THE COURT: Were you with Masecchia when he
17 interviewed Anderson on June 4th?

18 THE WITNESS: That's correct.

19 THE COURT: You were?

20 THE WITNESS: Yes, I was.

21 THE COURT: Were you privy to whatever is
22 contained within that report, P-88 --

23 THE WITNESS: Yes sir.

24 THE COURT: -- and its contents? Okay. You
25 are but I'm not. I'm just getting squared away

1 A. Costantino - Cross

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2 here as to what we're talking about.

3 THE WITNESS: Okay.

4 THE COURT: Did you interview her and there
5 was some kind of a photographic presentation made
6 to her?

7 THE WITNESS: That's correct.

8 MR. COTTER: And the purpose -- I'm sorry,
9 Judge, may I?

10 THE COURT: Yes, by all means. I'm sorry.

11 Q. Can I have this back?

12 A. Sure.

13 Q. Both. May I have both back? Thank you. Now you
14 and Masecchia went to go see Wymeka Anderson on June 4th,
15 1998, correct?

16 A. That's correct.

17 Q. And that was shortly after Mr. Epps' sentencing
18 had been adjourned, is that your recollection?

19 A. Has been adjourned?

20 Q. Had been adjourned.

21 A. I guess so, yes.

22 Q. Are you speculating or do you remember?

23 A. It was after that. Yes.

24 Q. Okay. Now the purpose of going to see Wymeka
25 Anderson was to show her a picture of Russell Montgomery's

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A. Costantino - Cross

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2

girlfriend to see whether Jackie Bradley could identify
3 Russell Montgomery's girlfriend as the driver of the vehicle
4 in which the killer of Tamika Means sat, is that correct?

5

A. Well, the purpose was also to find out if we're
6 talking about the same Constance Ferguson, to ascertain if
7 it's the same person. We didn't know, there may be a few
8 Constance Fergusons, so we had to make sure that Jackie
9 Bradley -- or not Jackie Bradley, Wymeka Anderson could
10 identify Connie Ferguson as the girlfriend of Russell
11 Montgomery. That was the purpose to find out if it was the
12 same person.

13

Q. Now -- and then if the same person -- then to see
14 whether or not this Connie Ferguson was the driver of the
15 vehicle in which the killer of Tamika Means was, correct?

16

A. Yes. That was the premise.

17

THE COURT: Connie Ferguson was said to be the
18 girlfriend of Russell Montgomery?

19

THE WITNESS: That's correct.

20

THE COURT: And what was the result of the
21 array presentation?

22

THE WITNESS: Mrs. Anderson did say yes,
23 that's the Constance Ferguson I know to be the
24 girlfriend of Russell Montgomery.

25

THE COURT: Okay. So they were in effect both

1 A. Costantino - Cross

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2 girlfriends of, not -- strike that. I'll withdraw
3 that. Means was the -- strike that. Anderson was
4 the girlfriend of Paul Pope and Connie Ferguson was
5 the girlfriend of Russell Montgomery, is that now
6 correct?

7 THE WITNESS: That's the information we had.

8 THE COURT: All right. Go ahead.

9 Q. If I could just back up for a second, Detective.
10 You indicated that the first that you had heard of any
11 connection between Russell Montgomery and the death of Tamika
12 Means was after Cory Epps' conviction, do you recall that
13 testimony?

14 A. Yes.

15 Q. What do you mean by conviction when you use that
16 word?

17 A. What do I mean by conviction?

18 Q. Yeah.

19 A. When he was convicted in the court of law of the
20 death of Tamika Means.

21 Q. And by conviction you mean jury verdict?

22 A. That's correct.

23 Q. Now did you have any involvement in the
24 investigation of the Paul Pope homicide?

25 A. Very little bit.

1 A. Costantino - Cross

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2 Q. Can you tell me what it was?

3 A. I went to Niagara Falls to interview someone that
4 may have had information on that homicide.

5 Q. And if you can, Detective, tell me when you
6 learned the identity of the authoress of the letter that I
7 showed you, which is Defendant's 2 -- whoops, 5, I believe?
8 Defendant's 5.

9 A. That was prior to June 4th, before we met her to
10 show her a photo array.

11 Q. And who told you who the authoress of that letter
12 was?

13 A. I think it was Mr. Schwegler.

14 Q. Mr. Schwegler told you?

15 A. That's correct.

16 Q. That the person who wrote that letter is Wymeka
17 Anderson?

18 A. That's correct.

19 Q. Prior to June 4th?

20 A. That's correct.

21 Q. Do you have any idea how Mr. Schwegler would have
22 known that?

23 A. No, I don't.

24 Q. You didn't learn it from Andy LoTempio?

25 A. I didn't talk to Andy LoTempio. I did not learn

1 A. Costantino - Cross

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2 | it from Andy LoTempio.

3 Q. Now on June 4th of 1998, did you bring Wymeka
4 Anderson down to the Homicide Bureau?

5 A. Well, what does the photo array show where that
6 photo array was shown? Can I look at the P-88 again?

7 Q. Defendant's 7 says that it took place at
8 74 Franklin Street, Room 304 I believe.

9 A. Well, that's where it took place then.

10 Q. Okay.

11 A. If that's what it says.

12 Q. How did Wymeka Anderson get there?

13 A. I don't recall, but we probably picked her up and
14 brought her there.

15 Q. And on June 4th, did Miss Anderson tell you that
16 she wrote the letter that was Defendant's 5 that you just
17 looked at?

18 A. You mean on June 4th? She may have in a
19 conversation that we might have had prior to showing her the
20 photo array. We knew that supposedly she wrote it and she
21 might have told us as well on that date.

22 Q. Okay. Did you yourself ever ask her, Miss
23 Anderson, did you write the letter that you gave to Andy
24 LoTempio?

25 A. No, I don't recall -- I think -- I think it was a

1 A. Costantino - Cross

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2 foregone conclusion that she had written it and we weren't,
3 you know, discussing it. I think she knew that we knew she
4 wrote it so no questions were asked, well, did you write this
5 letter. I think it was we knew that she wrote it and she
6 knew that we knew that she wrote it. Do you understand? So
7 there was no need to ask that question.

8 Q. Now other than June 4th, did you ever have any
9 contact with Wymeka Anderson? June 4th, '98.

10 A. After June 4th?

11 Q. Or prior.

12 A. After June 4th I did but not prior.

13 Q. Okay. And was your contact with Miss Anderson
14 after June 4th relative to Cory Epps' case?

15 A. No, it was on another one.

16 Q. Now on your June 4th contact, did you issue any
17 kind of memorandum? Did you write anything? Any notes?

18 A. Not that I recall. This is probably what we did,
19 showed her a photo array. There may be a P-73 explaining the
20 procedure on the 4th on the photo array presentation.

21 Q. Did you tape record it?

22 A. NO.

23 Q. Now were you present with Miss Anderson and
24 several members of the Homicide Squad when she disclosed that
25 she had written the letter?

1 A. Costantino - Cross

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2 A. No.

3 Q. Do you recall ever losing your temper with her?

4 A. When are you talking about? When?

5 Q. At any point in time. I think the only day that
6 we have established on this case is June 4th, 1998.

7 A. No. Did I lose my temper with her?

8 Q. Yeah. Get cross, get short?

9 A. No, not at all.

10 Q. Where is the photo array?

11 A. Probably in the file somewhere.

12 Q. Prior to coming here today, did you go through
13 the Montgomery file to see if there were any handwritten
14 notes or any memoranda?

15 A. I did not investigate the Russell Montgomery,
16 Paul Pope case. Just one statement that I took in Niagara
17 Falls. I did not go through that file, no.

18 Q. Prior to testifying today, did you go through the
19 Cory Epps' file?

20 A. I looked at it.

21 Q. And when did you do that?

22 A. Last week, week before.

23 Q. Did you see any mention in there that Wymeka
24 Anderson disclosed that she was the authoress of that letter?

25 A. No, I did not.

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1 A. Costantino - Cross 50

2 Q. But it's your understanding that she did at some
3 point?

4 A. Did what?

5 Q. Disclosed that she was the authoress.

6 A. Of this letter?

7 | Q. (Indicated affirmatively).

8 A. She never told me personally she wrote the

9 letter. Mr. Schwegler had told me she wrote the letter.

10 When we picked her up, it was an understanding that she had
11 written the letter and that's as far as it went. Did I ever
12 ask, did you write the letter? No. Did she personally tell
13 me she wrote the letter? No.

14 THE COURT: That's been dealt with.

15 THE WITNESS: Yeah, I thought so, too, sir.

16 Q. I think finally, Detective, when you went, or
17 brought Miss Anderson in on June 4th of '98, there's a
18 specific reference to the possibility of Russell Montgomery's
19 involvement in Tamika Means' death, is that correct?

20 A. To ascertain if we're talking about the right
21 Constance Ferguson and to see if this Constance Ferguson may
22 have been with the person, Mr. Epps, or when Mr. Epps shot
23 Tamika Means.

24 Q. Whomever shot Tamika Means.

25 A. Whomever shot Tamika Means. Who was convicted of

1 A. Costantino - Redirect

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2 | shooting Tamika Means.

3 Q. I understand that, but whoever shot Tamika Means,
4 correct?

5 A. Well, in my mind I know who shot Tamika Means.

6 Q. Is my understanding correct that on June 4th, '98
7 when you brought Miss Anderson in, it was in direct relation
8 to her disclosure of some connection of Russell Montgomery to
9 Tamika Means homicide?

10 A. That's correct.

11 MR. COTTER: Thank you.

12 | REDIRECT EXAMINATION

13 BY MR. SCHWEGLER:

14 Q. Sir, after you had -- after you had shown the
15 photo array contained of females to Miss Anderson and she
16 picked out Connie Ferguson, did you then show that same photo
17 array to Jackie Bradley?

18 A. Yes, we did.

19 Q. And what was the response in showing that same
20 photo array to Jackie Bradley, looking for the driver of the
21 killer's vehicle?

22 A. She did not pick out anyone in that photograph.

23 Q. All right. In Exhibit, Defendant's 8, which is
24 together with a fastener, I'm going to show you the last two
25 pages and ask if you can identify those for us.

1 A. Costantino - Redirect 52

2 A. It's a fax sheet from the District Attorney's
3 Office.

4 Q. What's the date on that, sir?

5 A. June 3rd. It's a fax to Chief Riga.

6 Q. Was that -- look at the next page. Was that and
7 the next page given to you either on or before June 4th --
8 either on the 3rd or the 4th?

9 A. Yes. I remember Chief Riga bringing this to our
10 attention.

11 Q. Is that the manner in which you received
12 information concerning --

13 A. The letter.

14 Q. -- the possible author of the letter?

15 A. That is, sir, that is correct.

16 Q. And I relayed to you information that I had
17 received from Andy LoTempio who claimed the author might be
18 Pumpkin?

19 A. That's correct.

20 MR. SCHWEGLER: I have nothing further of this
21 witness. Thank you.

22 THE COURT: All right. Thank you.

23 MR. COTTER: If I may.

24 MR. SCHWEGLER: Detective --- sorry. Go ahead.

25 MR. COTTER: If you have more --

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2 MR. SCHWEGLER: With Detective Masecchia and
3 then I'll rest.

4 MR. COTTER: Does the Court -- I would like to
5 ask him a couple more questions.

6 THE COURT: Well, okay, but there's a time for
7 these inquiries and it's taking an awful long time
8 to extract that which is not basically contested
9 here and I can proceed. Go ahead.

10 RECROSS EXAMINATION

11 BY MR. COTTER:

12 Q. Directing your attention to the last two pages --

13 A. Yes sir.

14 Q. -- the name Wymeka Anderson does not appear,
15 correct?

16 A. No, just the name Pumpkin.

17 Q. Do you recall how you connected the two?

18 A. I guess some other detectives knew that Pumpkin,
19 or Wymeka Anderson goes by the nickname of Pumpkin.

20 Q. And that she, at this point, had given statements
21 in the Russell Montgomery, or the Paul Pope homicide?

22 A. That's correct.

23 Q. Okay. And you knew at this point on June 4th who
24 wrote the letter?

25 A. That's correct.